

(2005) 02 DEL CK 0149

In the Delhi High Court

Case No : WP (C) No. 4286 of 2003 and CM No. 7348 of 2003

Shakuntala Export House (P) Ltd.

APPELLANT

Vs

P.O. Labour Court X and Another

RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Citation : (2005) 117 DLT 479 : (2005) 80 DRJ 389 : (2005) 105 FLR 487 :
(2005) 2 LLJ 389 : (2006) 1 SLJ 191

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Raj Birbal, R.S. Nagpal, Raavi Birbal and Gautam Dutta, for the Appellant; K. Venkataraman and P.K. Sharma for Respondent Nos. 3-4, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule. With the consent of the counsel for the parties the writ petition is taken up for final hearing.

2. This writ petition challenges the award dated 2nd May 2002 passed by the Labour Court in ID No. 1056 of 1995 (Old No. 149 of 1994). The award while finding the termination of service of the respondents No. 3 and 4 to be invalid nevertheless declined reinstatement on the ground that the management had closed down its manufacturing unit. Consequently only full back wages were awarded. The disputes was referred to in the following terms by the order of reference dated 18th August 1984:

"Whether the termination of services of S.Shri Mohd. Alia-u-ddin Khan, Smt. Kanta Sharma and Mrs. Pushpa Batra is illegal and/or unjustified and if so, to what relief are they entitled and what directions re necessary in this respect?"

3. The petition averred that Smt. Kanta Sharma and Smt. Pushpa Batra were working with the petitioner company since 8th October 1978 and 18th January 1977 respectively. The workmen's case before the Labour Court was that upon

the non maintenance of the service record a report was lodged with the Labour Inspector which annoyed the petitioner's management which terminated their services unlawfully on 3rd September 1993. The Labour Court has relied upon the evidence of the two workmen which included notices of demand Exhibits DW 1/3 to DW 1/5, ESI card Ex. 2/2 and certificate issued by the management Ex. DW 2/3. Smt. Pushpa Batra, respondent No.3, also deposed that her services were wrongly terminated on 3rd September 1993 and she had consequently issued demand notices Ex. WW 1/5, postal receipts Ex. WW1/3 to WW 1/5. On the other hand, the respondent examined MW 1, Umesh Chandra who was unable to prove the documents to show the final settlement of the workers at the time of the closure as claimed by the petitioner management. MW 2 submitted that he was an accountant of the petitioner and the name of the workman was not on the rolls on 5th May 1997 and their names were struck off from the rolls as they failed to resume their duty for considerable time. MW 3 admitted in the cross examination that the workman whose services were terminated were given all legitimate dues including notice pay and retrenchment compensation.

4. The Labour Court has found that even if Smt. Pushpa Batra and Smt. Kanta Sharma have abandoned their services, as per law laid down by this Court in MCD v. Sukhbir Singh, 1994 2nd 332, the management was duty bound to conduct an inquiry. Even otherwise the management witness MW 2 has stated that the names of the workmen were struck off from the rolls as they failed to resume their duty for a considerable time whereas MW 3 has stated that the workman whose services were terminated were given all legitimate dues including notice pay and retrenchment compensation.

5. Since the management's plea of abandonment was not accepted the impugned award was passed in favor of the respondents No. 3 and 4.

6. The two contradictory pleas of abandonment and payment of notice pay and retrenchment compensation raised by the petitioner cannot stand together, particularly when no evidence of this payment of the final settlement of dues of the workmen was adduced by the petitioner. Furthermore no enquiry in respect of abandonment was held as mandated by the position of law laid down in MCD v. Sukhbir Singh (supra).

7. The above findings are findings of fact and do not warrant any interference under Article 226 of the Constitution of India. Even otherwise the award is justified in view of the contradictory pleas and non holding of an enquiry. Accordingly the writ petition is dismissed. The interim order dated 9th July 2003 stands vacated and all applications stand disposed of.